

Army Regulation 135–175

Army National Guard and Army Reserve

Separation of Officers

**Headquarters
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SUMMARY of CHANGE

AR 135-175

Separation of Officers

This UPDATE printing--

- o Publishes a reprint of this publication, last printed on 22 February 1971.
- o Incorporates Changes 1 through 19.

Army National Guard and Army Reserve

Separation of Officers

By Order of the Secretary of the Army:

JOHN A. WICKHAM, JR.
General, United States Army
Chief of Staff

Official:

R. L. DILWORTH
Brigadier General, United States Army
The Adjutant General

History. The original form of this regulation was first published on 22 February 1971. Since that time, changes have been issued to amend the original. As of 15 May 1987, permanent Changes 1 through 19 remain in effect. This UPDATE printing incorporates all of those changes directly into the body of text. This publication has been reorganized to make it compatible with the Army electronic

publishing database. No content has been changed.

Summary. This regulation provides policy, criteria, and procedures for the separation of officers of the Army National Guard of the United States (ARNGUS) and the United States Army Reserve (USAR), except for officers serving on active duty or active duty training exceeding 90 days.

Applicability. (See para 1–2)

Proponent and exception authority. The proponent agency of this regulation is the Office of the Deputy Chief of Staff for Personnel.

Army management control process. Not applicable.

Supplementation. Supplementation of this regulation and establishment of forms other than DA Forms are prohibited without prior approval from the Commander, U.S. Army ZAP–P, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Interim changes. Interim changes to

this regulation are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Commander, U.S. Army ZAP–P, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Distribution. Active Army, C; USAR, A; ARNG, A.

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Chapter 1

General Provisions

1-1. Purpose

This regulation prescribes the policies, criteria, and procedures governing the separation of Reserve officers of the Army.

1-2. Scope

a. Subject to the provisions of b below, this regulation applies to all officers of the Army National Guard of the United States (ARNGUS) and the United States Army Reserve (USAR), except for officers serving on active duty or on active duty for training (ADT) for a period in excess of 90 days. As used in this regulation, masculine gender pronouns will mean both male and female personnel, unless otherwise expressly so stated.

b. Other regulations governing the processing for separation of Reserve officers are—

- (1) AR 604-10 —if the interest of the National security is involved.
- (2) AR 600-43 —in the case of classification as bona fide conscientious objectors.
- (3) AR 635-120 —for dropping from the rolls of the Army of retired officers entitled to retired pay.
- (4) AR 600-31 —when suspension of favorable personnel action has been initiated.
- (5) AR 635-100 —for Reserve component personnel on active duty for training.

c. Changes to this regulation will not invalidate any action taken prior to the effective dates of the changes.

1-3. Policy

a. Reserve component officers will be separated only by—

- (1) The Secretary of the Army.
- (2) Commanders specified in this regulation under conditions set forth in this and other pertinent regulations.
- (3) Commanders specified in special directives of the Secretary of the Army under the conditions in these directives.
- (4) In relation to (2) and (3) above, the discharge authority delegated to commanders by this regulation will not include authority to discharge an officer under a court-martial sentence to dismissal, prior to completion of appellate review, unless the discharge authority intends the discharge to act as a remission of the conviction.

b. Discharges or any other type of separation action terminate the individual's remaining statutory military service obligation incurred under 10 USC 651 or Military Selective Service Act of 1967, as amended, unless it is for the purpose of immediate reentry (the day following discharge or separation) in the same or any other military status; in the same or any other component of the Armed Forces; or of the uniformed services (para 4-8) of the United States. A statutory military service obligation once terminated may not again be acquired on reentry in the same or any other military status. An individual whose military service obligation is terminated may remain subject to induction through Selective Service in accordance with the rules and criteria in effect at the time.

1-3.1. References

Required and related publications and referenced forms are listed in appendix A.

1-4. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the consolidated glossary located in the back of this volume.

1-5. Administrative separation proceedings

(Rescinded.)

1-6. Type of discharge certificate to be furnished

Each officer discharged honorably or under honorable conditions will be furnished an appropriate discharge certificate, prepared as prescribed in AR 635-5. Maximum consideration of all events and circumstances leading to the discharge is essential in determining the type of discharge certificate to be furnished or recommended. The following guidance is furnished in addition to that found in paragraph 2-40 on homosexuality cases:

a. The type of discharge certificate to be furnished will be based solely on the officer's behavior and performance of duty during the current period of service, when—

- (1) Actually performing active duty, active duty for training, or inactive duty training.
- (2) Actively participating in or under an obligation to participate in Reserve activities, and the behavior relates directly to the officer's Reserve status.

b. The types of discharge certificates are—

- (1) *Honorable Discharge Certificate (DD Form 256A)*. An honorable discharge is a separation from the United States Army with honor. The issue of an honorable discharge is conditioned on proper military behavior and proficient and industrious performance of duty, giving due regard to the grade held and the capabilities of the officer concerned.

(2) *General Discharge Certificate (Under Honorable Conditions) (DD Form 257A)*. A general discharge is a separation from the United States Army under honorable conditions of an officer whose military record is not sufficiently meritorious to warrant an honorable discharge.

(3) *(Rescinded.)*

1-7. Effective date of separation

The effective date will be at 2400 hours of the date of notice of discharge unless—

- a. Specifically directed otherwise by HQDA.
- b. Directed otherwise in this regulation.
- c. Discharged by reason of entry into a different military status or civilian status with the Uniformed Services. The effective date will be the day prior to the date of entry into new status.
- d. Discharged by reason of completion of the period of obligated service. The effective date of discharge will be at 2400 hours of the date the obligated service is completed.
- e. Discharged because of reaching the maximum allowable age. The effective date of discharge will be the last day of the month in which maximum age is attained (AR 140-10).
- f. Discharged in grade of lieutenant colonel or below because the maximum years of service authorized in AR 140-10 have been completed. The effective date of discharge will be 30 days after completion of the maximum service authorized.
- g. Discharged in grade of colonel, brigadier general, or major general because the maximum years of service for grade (AR 140-10) have been completed. The effective date of discharge will be 30 days after completion of the maximum service authorized for the officer's grade or on the fifth anniversary date of appointment in the grade, *whichever is later*.
- h. Notwithstanding the above provisions, certain USAR officers of the AMEDD branch may be retained as an exception to removal for length of service or maximum age (AR 140-10, chap 7, sec III).

1-8. Notification of separation

- a. Separation for all reasons other than those in paragraph 1-7, is effective at the time the officer is notified.
- b. Notice of separation may be either—
 - (1) Actual, by delivery of the discharge certificate to the member.
 - (2) Constructive, when actual delivery of the discharge certificate cannot be accomplished due to absence of the member to be discharged. Receipt by the member's organization at the proper station of the order directing his/her discharge will be deemed sufficient notice. The date of receipt of the order by the member's organization and the reason why actual notice thereof was not given will be annotated on the back of the discharge order and certificate. The annotated discharge certificate and conformed copy of the order will be forwarded to the member at the address provided for that purpose. The annotated order, further reflecting date of mailing to the member, will be included in the personnel file forwarded to SPR-R, 9700 Page Boulevard, St. Louis, MO 63132-5200. If the documents mailed to the individual are returned unclaimed or undeliverable, they may be destroyed.

1-9. Mentally incompetent

The effective date of separation of a mentally incompetent officer may be by constructive notice by delivery of the discharge certificate to the guardian, next of kin, or the superintendent of an institution in which the officer may be hospitalized.

1-10. Orders

- a. Orders announcing discharge will be issued as shown in AR 310-10.
- b. A discharge order may not be revoked after its effective date, provided—
 - (1) The order was published from a headquarters authorized to approve the discharge and to issue a discharge certificate (para 2-8).
 - (2) There is no evidence that the discharge was obtained under fraudulent circumstances.
 - (3) The officer concerned received actual or constructive notice of the discharge.
- c. An officer whose resignation has been accepted or whose discharge has been directed will be separated on the date specified in orders or as otherwise directed by HQDA. The date of separation, specified or directed, will not be changed without prior approval of HQDA; nor can separation orders be revoked subsequent to the specified or directed date of separation.

1-11. Notification of discharge to Selective Service System

(Rescinded.)

1-12. Records disposition

- a. When an officer vacates his Reserve appointment (chap 5) because of enlistment in the Army National Guard, the

MPRJ and accompanying papers will be forwarded to the adjutant general of the appropriate State, Puerto Rico, the Virgin Islands, or District of Columbia.

b. When an officer is discharged from Reserve status, his MPRJ and accompanying papers, including a copy of the discharge order, will be forwarded to SPR-R, in accordance with instructions in appendix D, table D-12, 8-11.

1-12.1. Appeals

a. An officer has the right to appeal an unfavorable action under this regulation which affects his military status, as prescribed in *b* below, except if—

- (1) Action was taken under the provisions of chapter 2.
- (2) Any other action was taken in which the officer was permitted to present his or her case before a board of officers and waived such opportunity.
- (3) Any other action in which the officer, or someone acting on his or her behalf, presented his or her case before a board of officers.

b. An appeal will be submitted in writing by the individual concerned within 15 days of notification of adverse action. The application will state the reason for the appeal and explain the facts pertinent to his case that he feels were not fully considered, including any additional evidence he may wish to present. The appeal will be submitted for reconsideration, through channels, to the authority who originally took the final unfavorable action. If that authority does not grant the appeal, it will be forwarded as follows:

- (1) If the original final authority was the area commander, the appeal will be forwarded to Cdr, ARPERCEN.
- (2) If the original final authority was the Cdr, ARPERCEN, the appeal will be forwarded to Chief, Army Reserve as final authority.
- (3) If, at the time of appeal, the officer is no longer subject to the jurisdiction of the original final authority, the appeal will be forwarded through channels to the Cdr, ARPERCEN.

1-13. Statutory authority

The provisions of law stated in *a* through *h* below pertain to the separation of Reserve component officers. These provisions are sections of Title 10, USC, except where otherwise provided.

a. Section 1162(a) provides for discharge of Reserve commissioned officers by the President, and warrant officers under regulations promulgated by the Secretary of the Army.

b. Section 1162(b) provides for the separation of any officer, on his request, who becomes a regular or duly ordained minister of religion.

c. (*Rescinded.*)

d. Section 1163(a) precludes the involuntary separation of officers with 3 or more years of commissioned service except on the approved recommendations of a board of officers convened by competent authority or as otherwise provided by law.

e. Section 1163(b) provides for the dropping from the rolls of the Army of an officer who has been absent without authority for not less than 3 months; or who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a civil court and whose sentence has become final.

f. Section 1163(c) precludes the separation of an officer for cause under conditions other than honorable unless discharged under conditions other than honorable, pursuant to—

- (1) Approved sentence of a court-martial.
- (2) Approved findings of a board of officers convened by competent authority.
- (3) Officer concerned waives such board proceedings and consents to discharge under conditions other than honorable.

g. Section 3352(b) provides that an officer of the ARNGUS, on withdrawal of Federal recognition, becomes a member of the Army Reserve unless he is discharged from his appointment as a Reserve of the Army.

h. Section 3820(b) provides that an officer of the ARNGUS will be discharged as a Reserve of the Army when his Federal recognition has been withdrawn, based on the approved recommendations of a fitness or efficiency board convened under Title 32 USC 323 (NGR 635-101).

Chapter 2 Involuntary Separation—ARNGUS and USAR Officers

Section I General

2-1. General

This chapter prescribes the criteria and procedures governing the involuntary separation of Reserve officers of the Army when their retention is not in the best interest of the service.

2-2. Scope

The provisions of this chapter apply to—

- a. Officers of the USAR.
- b. Officers of the ARNGUS when—

(1) Recommendations submitted by an efficiency or physical fitness board convened under 32 USC 323(b) (NGR 635–101) for withdrawal of Federal recognition are approved by the Chief, National Guard Bureau (CNGB). Further board action under this regulation following such approval is not required.

(2) Action is directed by HQDA, on the recommendations of the CNGB, based on derogatory suitability information developed by investigations conducted in implementation of the Army Security Program. Release of such information to any State adjutant general or other ARNG personnel not in the active Federal service is prohibited (AR 604–10).

(3) Circumstances described in paragraph 2-13 are applicable.

2-3. Limitation on separation

a. Except as set forth below, the separation of an officer under the provisions of this chapter will be accomplished only on the approved recommendations of a board of officers convened by competent authority.

b. An enlisted member serving on active duty who holds Reserve officer status, who is discharged as a result of board action for one of the following reasons, may be separated from his Reserve officer status without further board actions *only* if such recommendation is made by the board which acted on the case as an enlisted member and such recommendation is approved by the convening authority.

(1) 200—for unsatisfactory performance, or misconduct (fraudulent entry, conviction by civil court, desertion, or absence without leave).

(2) (*Rescinded.*)

(3) 10—for security reasons.

c. An officer will be involuntarily separated without board action when the member—

(1) Submits a resignation in lieu of involuntary separation proceedings (para 6-12) and the resignation is accepted by HQDA.

(2) Has less than 3 years' commissioned service and the reason for separation is because of failure to meet the standards of a service school while attending a basic or detailed branch course due to academic or leadership deficiencies (para 2-11e), or for disciplinary reasons (para 2-12n).

(3) Is being processed for separation under paragraph 2-13.

d. An officer with 20 or more years of qualifying Federal service for retired pay (AR 135–180) who is being considered for involuntary separation will be given an opportunity to elect transfer to the Retired Reserve in lieu of involuntary separation. Transfer to the Retired Reserve may not be elected when Federal recognition has been withdrawn based on the approved recommendations of a board of officers convened under 32 USC 323(b) (see paragraph 1-13h).

e. An executed bad conduct discharge or dishonorable discharge is an absolute expulsion from the Armed Forces. Accordingly, any military status the individual holds, including status as a Reserve commissioned or warrant officer of the Army, is terminated on the execution of a bad conduct discharge or a dishonorable discharge.

f. Notwithstanding the above provisions, an officer who is found guilty, or action is taken which is tantamount to a finding of guilty, by any Federal or State court may be released by the Secretary of the Army from an active status immediately when the offense involves moral turpitude, regardless of the sentence received or maximum punishment permissible under any code. The release of an officer under this provision who has completed 18 or more years of qualifying Federal service on the date the officer is found guilty, must be approved by the Secretary of the Army. If the finding of guilty is subsequently set aside, the officer may with his/her own consent and the approval of the Secretary of the Army, be returned to an active status.

2-4. Retention or separation

a. In determining whether an officer should retain military status or be administratively separated, the member's current period of service, records of nonjudicial punishment, and any other factors that are material and relevant should be evaluated. (See sec VII for homosexuality cases.)

b. Records of nonjudicial punishment will be considered only when—

(1) Such records would, under the circumstances of the particular case, have a direct and strong probative value in determining whether retention or administrative separation should be accomplished.

(2) The case involves patterns of conduct or behavior which would become manifest only over an extended period of time.

2-5. Limitations

a. No officer will be considered for involuntary separation for the reasons in paragraph 2-11 or 2-12 because of conduct that has been the subject of judicial proceedings resulting in an acquittal based on the merits of the case or in an action having the same effect.

b. No officer will be considered for involuntary separation for the reasons in paragraph 2-11 or 2-12 because of conduct that has been the subject of administrative involuntary separation proceedings resulting in a final determination that the member should be retained in the service. For purposes of this paragraph, an officer will be considered to have been the subject of involuntary separation proceedings only if allegations against him have been acted on (para 2-17c or *f*) by the appropriate area commander.

c. The limitations in *a* above do not apply when—

(1) Substantial evidence is discovered (that was not known at the time of the original proceedings, despite the exercise of due diligence) which would probably produce a result significantly less favorable for the member at a new hearing.

(2) The member's subsequent conduct warrants considering him for discharge. Such conduct need not independently justify the member's involuntary separation but must be serious enough to raise substantial question as to the member's potential for further useful military service. However, this exception does not permit further consideration of conduct of which the member has been absolved by a judicial body in a prior final, factual determination based on the merits of the case.

(3) An express exemption has been granted by HQDA on a determination that, due to the unusual circumstances of the case, administrative separation should be effected.

d. Requests for determination under *c* above, together with recommendations, will be forwarded to PAT-R, 9700 Page Boulevard, St. Louis, MO 63132-5200.

e. Under the circumstances in (1) and (2) below, an officer who has been considered for involuntary separation but retained may again be considered for involuntary separation because of lack of proficiency or recurrent misconduct subsequent to the earlier consideration; or because of misconduct that occurred prior to that alleged in the earlier proceedings but had not been discovered earlier, despite the exercise of due diligence.

(1) An officer who has been considered for involuntary separation for substandard performance of duty and retained may again be considered for involuntary separation for substandard performance of duty at any time 1 year after the prior case has been closed.

(2) An officer may be considered for involuntary separation for moral or professional dereliction or in the interests of national security at any time subsequent to the closing of the prior case. The grounds for involuntary separation in the earlier case may be joined with the grounds in the later case if both actions are based on the same ground (substandard performance, moral or professional dereliction, or national security) provided the earlier involuntary separation proceeding does not include a factual determination specifically absolving the member of the allegations then under consideration. If the grounds for involuntary separation in the earlier proceedings are joined, the additional grounds considered in the subsequent proceeding need not independently justify the member's discharge but must be sufficiently serious to raise a substantial question as to the member's potential for further useful military service.

f. Punishment resulting from trial by court-martial or under the provisions of Article 15, UCMJ, for misconduct and the subsequent use of this fact in support of involuntary separation under the provisions of this regulation does not constitute double jeopardy.

2-6. Medical condition

a. An officer will not be considered for involuntary separation under this regulation if it has been determined that, at the time of the conduct which is the basis of proceedings, the officer was unable to distinguish right from wrong and adhere to the right as a result of a mental defect, disease, or derangement. In such event, the officer will be processed under pertinent medical regulations. Further, an officer recommended for involuntary separation because of substandard performance of duty based on conduct resulting from a physical condition or nonpsychotic mental illness (exclusive of disorders of character and behavior) will also be processed under pertinent medical regulations. An officer who is not mentally capable of understanding the nature of the adverse proceedings and to assist in the defense will not be required to appear before an administrative separation board. The proceedings will be delayed until the officer recovers or the officer will be further processed under pertinent medical regulations. If an officer becomes mentally incompetent after a recommendation for involuntary separation has been submitted, the appropriate commander will immediately notify the area commander who convened the board.

b. When an officer is being considered for administrative separation under this regulation, with no indication of

mental incompetency, and the officer fails or refuses to undergo required medical examination or psychiatric evaluation when required to do so, that officer will—

(1) Be advised in writing that his failure or refusal to undergo this examination or evaluation will be the basis for the board to proceed with its findings and recommendations without this information.

(2) When appropriate, be advised that a discharge under other than honorable conditions may be received.

(3) Be requested to acknowledge, *in writing*, an understanding of the situation and circumstances stated in the notification (para 1–8). A copy of the letter of notification and the officer's acknowledgement of understanding will be included with the board proceedings. If the officer fails or refuses to furnish this acknowledgement in writing, a notation to this effect will be made on the copy of the letter of notification. The copy of the letter, together with any mail delivery receipts, will be included with the board proceedings.

2–7. Medical evaluation when homosexuality is involved

a. Medical evaluation of officers considered for separation under paragraph 2–12g will include a mental status evaluation, to be accomplished by the examining physician. DA Form 3822–R (Report of Mental Status Evaluation) will be used for this purpose. A psychiatric study of the officer is not required, unless—

(1) Specifically requested by the officer;

(2) Deemed appropriate by the examining physician; or

(3) Specifically requested by the commander who recommended separation or by the board considering separation action.

b. A copy of the medical evaluation, including the psychiatric study (if any), will be filed with the individual's health record. The medical treatment facility commander will forward the original of this evaluation report to the unit commander.

2–8. Discharge authority

a. Except as otherwise provided in *b* and *c* below, HQDA will take final action on the recommendations of boards of officers and resignation in lieu of involuntary separation, based on the reasons 10 through 2–14. Area commanders will forward these cases, with the recommendations and remarks, to the Cdr, ARPERCEN, PAT–R.

b. The CNGB, acting for the Secretary of the Army, will review and approve or disapprove the findings of boards of officers convened by area commanders to determine whether or not Federal recognition of ARNGUS officers should be withdrawn because of inefficiency or physical unfitness (NGR 635–101). If the approved findings are against the officer, the CNGB will—

(1) Withdraw the officer's Federal recognition.

(2) Notify the appropriate State adjutant general and the area commander concerned.

(3) Furnish one copy of the approved board proceedings and a copy of the order withdrawing Federal recognition PAT–R.

c. On receipt of notification of withdrawal of the officer's Federal recognition under the circumstances set forth in *b*, above, Cdr, ARPERCEN will execute the discharge.

d. When separation action is taken under the provisions of this chapter, the case file of the individual will be reviewed by the appointing authority to determine whether the reporting requirements set forth in AR 190–10 are applicable. When such conditions exist in an individual's case file, the report required by AR 190–10 will be submitted.

2–9. Separation procedures for officers restored to active duty by court action

Certain Reserve commissioned and warrant officers who have been sentenced to confinement and/or discharge by military courts may be restored to duty by subsequent action of a military or civilian court. Suspension of favorable personnel action (AR 600–31) and an investigation to determine whether involuntary separation action is warranted will be initiated in the cases of such officers who are released from active duty to the Ready Reserve.

Section II

Reasons Which Require Involuntary Separation

2–10. General

Retention of officers substandard in performance of duty or conduct, deficient in character, or otherwise unsuited for military service cannot be justified in time of peace or war. The same standards of efficiency and conduct apply to all officers, regardless of component.

2–11. Substandard performance of duty

While not all-inclusive, existence of one of the following or similar conditions, unless successfully rebutted, authorizes involuntary separation of an officer due to substandard performance of duty. Officers discharged for any of the following reasons will be furnished an Honorable Discharge Certificate:

- a. Downward trend in overall performance resulting in an unacceptable record of efficiency or a consistent record of mediocre service indicating the officer has reached the peak of his potential.
- b. Failure to keep pace or to progress with contemporaries, such as successive promotion failure or a low record of efficiency when compared with other officers of the same grade, branch, and length of service.
- c. Failure to exercise necessary leadership or command required of an officer of his grade.
- d. Failure to perform with the technical proficiency required by the grade held.
- e. Failure to meet standards in a course of instruction at a service school due to academic or leadership deficiencies.
- f. Failure to properly discharge assignments commensurate with his grade and experience.
- g. Apathy, defective attitudes, or other character disorders, including inability or unwillingness to expend effort.
- h. Failure of a dual component member to be recommended for promotion in enlisted status, or to be selected for retention under the Active component enlisted Qualitative Retention Program.
- i. Failure to achieve satisfactory progress after participation in a medically established weight control program (see AR 600-9).

2-12. Moral or professional dereliction

While not all-inclusive, existence of one of the following or similar conditions, unless successfully rebutted, authorizes involuntary separation of an officer due to moral or professional dereliction. Officers discharged for any of the following reasons may be furnished an Honorable or General Discharge Certificate, or Other Than Honorable Conditions Discharge:

- a. Discreditable, intentional failure to meet personal financial obligations.
- b. Mismanagement of personal affairs to the discredit of the service.
- c. Mismanagement of personal affairs detrimentally affecting the performance of duty of the officer concerned.
- d. Intentional omission or misstatement of facts in official statements or records, for the purpose of misrepresentation.
- e. (**Rescinded.**)
- f. Acts of personal misconduct (including, but not limited to, acts committed while in a drunken or drug-intoxicated state).
- g. Homosexuality. (See sec VII.)
- h. (**Rescinded.**)
- i. Intentional neglect or failure to—
 - (1) Perform assigned duties.
 - (2) Participate satisfactorily in required Ready Reserve training (AR 135-91, chap 6).
 - (3) Comply with applicable directives to include but not be limited to—
 - (a) Furnishing a current address of record. (The officer cannot be located through the address furnished.)
 - (b) Maintaining a permanent residence, for mailing purposes, in the United States or its territories while traveling or residing in a foreign country other than one within the jurisdiction of an oversea commander (AR 140-1).
 - (c) Having the medical examination required by AR 140-120.
 - (d) Replying to official correspondence or completing administrative forms. When the followup action prescribed in AR 135-133 fails to locate the officer or clearly evidences willful neglect to complete the required forms or to reply to official correspondence, the appropriate commander will initiate involuntary separation action. Copies of communications remaining unanswered, or the substance thereof, with the dates and addresses, will be included in the recommendation for involuntary separation action, together with a brief description of any other means used to locate or communicate with the officer concerned. These documents will be furnished to the board of officers and will be made a part of the completed board proceedings.
- j. Conviction by civil court of a felony when no sentence to confinement results (para 3-3).
- k. Conviction by a foreign court, resulting in confinement or other restriction of the officer's freedom which significantly diminishes that individual's usefulness to the Army.
- l. Entry into a military service of a foreign government.
- m. Special derogatory evaluation report (AR 18 or 5-25).
- n. Failure to meet the standards in a course of instruction at a service school due to disciplinary reasons.
- o. Conduct unbecoming an officer.
- p. When one or more of the reasons in *a* through *n* above is alleged and the circumstances on which they were based indicated that the reason in *o* above also is involved, it will constitute additional reason for requiring involuntary separation.

2-13. Involuntary separation of officers who do not meet the medical fitness standards at time of appointment or who are

- a. Commissioned officers of a Reserve component who have less than 3 years commissioned service, and warrant officers who have less than 3 years service since accepting initial appointment in their present component, who did not

meet the medical fitness standards at the time of appointment and who fail to resign (chap 6, sec V) may be recommended for involuntary separation. This action will be taken when the commander or PMS determines that the best interest of the Government and the individual can be served by his or her discharge. If the disqualification was for HTLV-III positivity 502, paragraph 2-39*m* (a disqualification that became effective on 1 November 1985), the officer will be involuntarily separated.

b. An officer of a Reserve Component, regardless of length of service, who reports to AD or ADT for initial entry training on or after 1 October 1985, is confirmed positive for the HTLV-III virus or antibody 501, paragraph 2-39*m*, and who fails to resign (chap 6, sec III) will be involuntarily separated.

c. If the basis for an involuntary separation under this paragraph is confirmed positive for the HTVL-III virus or antibody, an honorable characterization of service will be given.

2-14. In the interest of National security

Existence of acts or behavior not clearly consistent with the interests of National security requires the involuntary separation of an officer (AR 604-10).

Section III

Initiation and Processing of Involuntary Separation Actions

2-15. When involuntary separation action is appropriate

No person has an inherent right to continue service as an officer. The privilege of service is his only as long as he performs satisfactorily. Responsibility for leadership and example require effective performance of assigned duties and exemplary conduct at all times. The Army has no place for officers who cannot meet these requirements, and their involuntary separation is essential. In view of the rapidity with which hostilities can now occur and the attendant likelihood that many officers may be called to active duty on short notice, the same standards of efficiency and conduct apply to officers of all Reserve components.

a. Every officer deserves a fair chance to demonstrate his or her capabilities. When an officer shows ineffective tendencies, especially if they are due to inexperience, that officer will, when practicable, be given another chance under another commander. At the same time, however, the officer's ineffectiveness should be systematically recorded in documents that are specific as to the period each covers, the duties observed, and the defects noted. Any officer who has been given a fair chance and has failed to become an effective officer will be considered for involuntary separation to ensure that his ineffectiveness is not permitted to continue to affect the Army adversely.

b. Recommendation for involuntary separation under this regulation cannot be based on empty generalities and vague impressions. It is necessary to establish with some precision the reasons why an officer is considered ineffective. Basically, this officer is one who does not get acceptable results. Inefficiency is a relative matter, hence a finite definition of the ineffective officer can never be reached. Many ineffective officers are attractive, handsome, decent, educated, honorable, intelligent and generous, and yet ineffective. It is perfectly proper to give an officer credit for his good qualities in the same letter or efficiency report which reveals his ineffectiveness as an officer. Specific reasons for failure should be documented with concrete examples in their support.

2-16. Recommendation for involuntary separation

a. Recommendation for involuntary separation may be originated by one of the following:

(1) A proper agency at HQDA regardless of an officer's assignment.

(2) A commander with respect to a member of that command.

(3) A duly constituted selection board, operating under official letter of instruction (LOI), in which the board may recommend individuals who should be involuntarily separated.

(4) The Professor of Military Science (PMS) responsible for the institution where an officer is pursuing a degree may start involuntary separation action. The PMS action applies to officers commissioned through the Early Commissioning Program (ECP) and the Commissioning of Completion Students Program (CCSP). The PMS will send the action for CCSP personnel to OPR-DE, 9700 Page Boulevard, St. Louis, MO 63132-5200. For ECP personnel, the PMS will send the action to the proper Reserve Forces commander.

b. HQDA agencies and selection board approving authorities will send their recommendations for involuntary separation directly to the proper area commander. Commanders of officers assigned to units will send their recommendations through channels to the proper area commander.

c. When the Cdr, ARPERCEN determines that sufficient basis exists to initiate involuntary separation action for officers under the jurisdictional control of that center, the procedures in paragraph 2-17*e* and *f*(1) and (2) will be followed. If the whereabouts of the officer are unknown or unascertained, or if the officer refuses to accept or respond to the notification, the Cdr, ARPERCEN is authorized to appoint a board of officers and follow provisions of paragraphs 2-17*g* and 2-20. If the officer elects a hearing before a board of officers, the following actions will apply:

(1) When the circumstances do not require Army investigative processes (AR 195-2), the recommendation for

involuntary separation, together with correspondence, statements, records, and similar related documents will be forwarded to the area commander in whose area the officer involved is currently residing.

(2) When circumstances indicate the need for Army investigative processes (AR 195-2), the recommendation for involuntary separation, together with correspondence, statements, records, and similar related documents will be forwarded to the area commander in whose area the incident occurred or to the responsible oversea commander requesting appropriate investigation. The area commander in whose area the incident occurred will review the report of other documents furnished by the Cdr, ARPERCEN and, except as otherwise provided in paragraph 2-8*b* and *c*, determine appropriate action (para 2-17).

d. Recommendations will clearly state the reasons for involuntary separation and will be supported by all documentary and physical evidence which can be reasonably included. With the exception of business entries and official records and reports, such as efficiency reports and health records, which are not made with a view to prosecution (see Manual for Courts-Martial, 1984, M.R.E. 803 (8)), all statements submitted, including reports of the investigation, will be under oath or affirmation unless the witness is dead, insane, or missing; or the exigencies of the service preclude obtaining a statement in affidavit form. Evidence to support a recommendation for involuntary separation must be able to stand on its own merits, adhering to one standard (substandard performance or moral or professional dereliction). Documents must be legible and lend themselves to reproduction. Copies reproduced by the thermofax process or other means which are barely legible, and nonpermanent-type reproduction will not be used.

2-17. Initial actions by area commander

The following actions may be taken by the area commander on recommendation for involuntary separation received from commanders or appropriate agencies at HQDA:

- a.* The case may be returned for further evidence or a recommendation as to further action.
- b.* If sufficient basis exists, the area commander may disapprove the recommendation, close the case, and return it to the initiating commander or appropriate agency at HQDA. (See para 2-43 on homosexuality cases.)
- c.* If considered necessary and desirable, the area commander may appoint or direct the appointment of an investigating officer (AR 15-6).
- d.* On receipt of the investigating officer's report, the area commander may disapprove the recommendation, close the case, and return it to the initiating commander or appropriate agency at HQDA.
- e.* If it is determined that sufficient basis exists to initiate involuntary separation action, the area commander will (if the whereabouts of the officer concerned is known or may be ascertained by 133)—

(1) Notify the officer concerned of the requirement to show cause for retention and will give the individual the reason for this requirement.

(2) Advise the officer in the above notification, if appropriate, that he may elect to submit a resignation in lieu of involuntary separation (sec IV and V, chap 6); or, if eligible, elect transfer to the Retired Reserve (para 2-3*d*); or to have the case acted on by a board of officers.

(3) Advise the officer of the requirement to acknowledge receipt of the above notification within 15 days of receipt, indicating his election on one of the above options.

(4) When determined necessary by notifying command, notification will be sent to member by certified mail, return receipt requested.

f. On securing the acknowledgement of receipt from the officer, notified in accordance with *e* above, the area commander will, if the officer—

- (1) Elects transfer to the Retired Reserve and is otherwise eligible—process the officer's request.
 - (2) Submits a resignation in lieu of involuntary separation—forward the resignation and related correspondence to HQDA (para 2-8*a*).
 - (3) Elects appearance before a board or elects board proceedings but waives appearance—take necessary steps to appoint the board as prescribed in this regulation and in AR 15-6.
- g.* If the whereabouts of the officer are unknown and unascertained after complying with the procedures prescribed in AR 135-133; or if the officer refuses to accept or respond to the notification required by *e* above, the area commander will take necessary steps to appoint a board of officers, as prescribed in this regulation and in AR 15-6. A copy of the notification and either a post office receipt confirming delivery or the returned unopened envelope showing mail was refused, unclaimed, or not delivered will become part of the board exhibits. This board may proceed in the officer's absence without according the privileges listed in paragraph 2-19, except that counsel will be appointed to represent him in his absence.

h. New allegations received by the area commander, supporting a recommendation for involuntary separation which has already been referred to a board of officers will, if the case has not been heard, be referred to the board of officers for consideration. If the case has already been heard and is finally closed favorably to the officer, appropriate action to initiate new proceedings may be taken, subject to paragraph 1-5.

2-18. Investigation of homosexuality

- a.* A commanding officer who receives information that an assigned officer may require separation under the criteria

in paragraph 2–39 will inquire thoroughly and comprehensively into the matter and ascertain all the facts in the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges. Favorable personnel action will be suspended, as prescribed in AR 600–31, unless the commander concerned determines the allegation is baseless. If the information available is significant enough to warrant further investigation, the commander will take necessary action to protect command security, including suspending security clearance and denying him access to classified defense information, pending completion of action on the case. When the results of the investigation substantiate allegations, the commanding officer will refer the member for medical evaluation and will revoke any security clearance 5, para 8–102a).

b. It is essential that all facts indicating homosexuality be recorded properly. The file will consist of the following documents, in addition to those required by paragraph 2–16*d*.

(1) Report of investigation will include but not be limited to—

(*a*) Statement of date and place of birth.

(*b*) Total years of military service.

(*c*) Date and current period of service.

(2) Statements of witnesses (see UCMJ Art. 31).

(3) Medical evaluation reports specified in paragraph 2–7.

(4) An individual's statement in his behalf if it is desired.

2–19. Rights of the officer

a. The following rights will be afforded the officer, except in those cases provided for in paragraph 2–17*g*. The area commander convening the board of officers will notify the officer of his right to—

(1) Be furnished copies of the records which will be submitted to the board, and of other pertinent and releasable documents, which may be requested.

(2) Consult with a consulting counsel (glossary).

(3) Present his case before a board of officers at personal expense (*b*(6) below applies).

(4) Be represented at any hearing by appointed counsel for representation (glossary) military counsel of his own choice, provided such counsel is reasonably available; or civilian counsel at his own expense.

(5) Submit statements in his own behalf.

(6) With exception of (1) and (2) above, waive the above rights in writing.

(7) Withdraw his waiver of his rights listed in (3), (4), and (5) above any time prior to the date the convening authority directs that his case be presented before a board of officers. The officer will be required, within a reasonable time (not less than 15 days), to consult with a consulting counsel ((2) above) prior to waiving the rights listed in (3), (4), and (5) above. If he elects to waive his rights, the officer will personally sign a waiver. His consulting counsel will advise him (see glossary) and will sign the written waiver as witness, indicating that he is a commissioned officer of The Judge Advocate General's Corps. If the officer refuses to consult with a consulting counsel, he will be ordered to do so by his commander. If he persists in his refusal, a statement to this effect will be prepared by the commander and included in his file. Board action will then proceed as if the officer had consulted with a consulting counsel.

b. If the officer is unable to appear before the board because of confinement by civil authorities or other restriction resulting from his own misconduct, the area commander convening the board will advise him by certified mail (Restricted delivery) of the pending board action and the fact that action has been suspended to give the officer the opportunity to exercise his right to—

(1) Be furnished copies of the records which will be submitted to the board, and of other pertinent and releasable documents, which may be requested.

(2) Consult by correspondence with a consulting counsel (glossary) (Consulting counsel's name and address will be included.)

(3) Request appointment of a counsel for representation; a named military counsel, if available; or employ civilian counsel at his own expense to represent him and, in his absence, present his case before the board.

(4) Submit statements in his own behalf.

(5) Waive the foregoing rights, either in writing or by declining to reply to the letter of notification within 30 days from the date of receipt.

(6) Be allowed a reasonable time to prepare his case. In no instance will he have less than 30 days from the date of notification by the area commander.

2–20. Area commander's actions on board recommendations

The following actions may be taken by area commanders on recommendations of board of officers acting on involuntary separation cases:

a. If the area commander in his review of a case in which involuntary separation has been recommended by the board of officers notes a substantial defect, in the proceedings, he will take action as follows:

(1) If the board has failed to make findings and recommendations as required by this regulation, he will return the case to the same board for compliance with this regulation.

(2) If there is an apparent error or omission in the record which may be corrected without reconsideration of the findings and recommendations of the board, he will return the case to the same board for corrective action.

(3) If the board committed an error that materially prejudiced a substantial right of the officer, he may close the case favorably to the respondent (para 2–20.1a(2)) or may convene a new board to hear the case. The new board may be furnished the evidence properly considered by the first board, including extracts from its records of testimony of witnesses who will not be available to testify at the rehearing. The new board may call additional witnesses. The new board may consider additional allegations, provided the respondent is advised. The new board may not make recommendations that are less favorable to the officer than those made by the initial board unless additional allegations are considered by the new board. No more than one rehearing may be directed without approval from HQDA.

(4) Except under the circumstances in (1) through (3) above or by direction of HQDA, he may not reopen the proceedings.

b. Ensure all evaluation reports required by AR 623–105 have been completed and forwarded to the appropriate agency for acceptance and inclusion in the rated officer's OMPF. The forwarding comment will include the report period of the last OER that was submitted prior to forwarding of the involuntary separation action.

c. Forward 3 copies of the board proceedings PAT–R (para 2–8a). The reason for disapproval will be given when applicable.

d. Board proceedings involving cases specified in paragraph 2–8b will be prepared in triplicate and forwarded through the appropriate State adjutant general to the area commander who convened the board. The area commander will indicate his recommendation for approval or disapproval ARP–O, WASH DC 20310–2500. When disapproval is recommended, the reasons will be given.

2–20.1. HQDA actions on board recommendations

a. When a board recommends the involuntary separation of an officer, HQDA (Cdr, ARPERCEN) will, as appropriate—

(1) Approve the recommendations of the board and advise the commander concerned to take necessary action to separate the officer.

(2) Disapprove the recommendations of the board, close the case, notify the officer and, if appropriate, the headquarters agency that recommended the involuntary separation. A copy of the letter of notification to the officer will be attached to the board proceedings. The commander recommending involuntary separation will be furnished a copy of the board proceedings and information concerning the final action taken. (See para 2–44 on homosexuality cases).

b. When a board recommends retaining an officer in a military status, HQDA will approve the recommendation, close the case, notify the officer and, if appropriate, the headquarters that recommended the involuntary separation. A copy of the letter of notification will be attached to the board proceedings. The commander recommending involuntary separation will be furnished a copy of the board proceedings and information concerning the final action taken.

2–21. Prompt action

Except for any delays that may be necessary to protect the rights of respondents, involuntary separation cases will be given prompt attention and handled as expeditiously as possible.

Section IV

Boards of Officers

2–22. Mission of boards of officers

a. These boards, convened to determine if officers will be retained in the Army, will ensure that all hearings are fair and impartial.

(1) It is the responsibility of the Government to establish by a preponderance of evidence that officers have failed to maintain established standards for grade and branch or that their conduct has been prejudicial to National security.

(2) *(Rescinded.)*

(3) Respondents must be prepared, however, to present evidence in their own behalf before the board. Although the Government has the burden of proof as stated in (1) above, failure by a respondent to present favorable evidence could work to his detriment.

b. *(Rescinded.)*

c. Except as otherwise noted in this regulation, investigating officers and boards of officers will follow the procedures in, and be governed by the provisions of, AR 15–6.

2–23. President of the board

The president of the board will—

a. Ensure that the respondent is granted such time as is reasonably necessary to prepare and present his case. Undue delay will not be permitted and the case will be conducted as expeditiously as possible.

b. Make necessary arrangements for securing a proper location, with an atmosphere that is consistent with the spirit and seriousness of the proceedings, and determine the date for the board to convene (not earlier than 30 days from the date the officer has received notification to show cause from the area commander) (para 2-19b(6)).

2-24. Recorder

The recorder will—

a. Notify the respondent in writing of the time and place the board of officers will be convened. This notice will be given not less than 10 days prior to the date the board is to convene.

b. Ensure that copies of all records and documents referred to the board with the case are given to the board members. Permit access by the respondent to all releasable records and furnish copies, if requested, as far in advance of the hearing as is reasonably necessary for the respondent to prepare and present a personal case.

2-25. Composition

a. Boards will be composed of commissioned officers, all of whom must be of equal or higher grade and senior in rank to the officer under consideration for involuntary separation.

(1) One of the members present will be a Regular Army officer, if one is available. If none is available, the appointing authority may substitute a Reserve officer who is serving on active duty.

(2) The remaining members of the board will be Reserve officers who are on active duty or in an active Reserve status.

(3) (*Rescinded.*)

(4) When a board is convened to consider ARNGUS officers investigated for unsuitability (para 2-2b(2)), to determine if their retention is warranted, at least one member of the board will be an ARNGUS officer.

(5) One member of the board must be the same sex, and, if reasonably available, branch of service as the officer being considered.

(6) The appointing authority may assign a Judge Advocate General Corps officer as legal advisor to each board of officers. The legal advisor will not be a member, will not vote, and will serve as an advisor only. If the officer being considered is a Judge Advocate General Corps officer, the legal advisor (if any is assigned) will be senior in rank to the officer being considered (10 USC 266(b)).

b. A commissioned or warrant officer will be named as the recorder in the letter appointing the board. The appointing authority may also appoint one or more officers as assistant recorder. The recorder and any assistant recorders will be without vote.

c. The provisions in (1) through (4) below apply to boards of officers appointed for purposes 11 through 2-14.

(1) *Appointment of board members.* The board of officers will be appointed by letter issued by the area commander.

(2) *Oath administered.* Board members and recorder will be sworn in.

(3) *Voting members of boards of officers.*

(a) These members will be as shown in a(1) and (2) above.

(b) When inefficiency is involved, one member will be an officer of the same branch if reasonably available.

(c) Chaplains, Medical, Dental, Veterinary, or Army Nurse Corps officers normally will not serve as board members, except when officers of their corps are the respondents.

(d) An uneven number of officers (3 or more) will constitute a quorum.

(e) Only voting members may sit in closed session.

(f) A voting member is subject to challenge for cause. The challenge will be determined by the senior unchallenged member on the board.

(4) *Ineligible officers.* No officer will sit as a member of a board of officers who—

(a) Is a witness in the case before the board.

(b) Appeared as a witness before or sat as a member of any previous boards of officers with respect to the respondent.

(c) Previously recommended or participated in recommendation for involuntary separation from an active status of the respondent.

(d) Prepared a derogatory evaluation report on the respondent.

(e) Otherwise has considered the case of the respondent.

d. In addition to the reasons in c(4) above, a board member may be challenged for cause for any reason that indicates that he or she cannot participate in the case fairly and impartially. The legal advisor, if any, may also be challenged for any reason in c(4) above or for any other reason that indicates that the advisor cannot participate in the case fairly or impartially.

Section V

Conduct of Hearing

2-26. Members of the board

- a. The members of the board will be asked if they are aware of any grounds which might be the basis for challenge for cause.
- b. All members of the board, voting and nonvoting, will be sworn in.
- c. The members of the board will refresh their memories as to the contents of the records, documents, and report which were furnished with the case.

2-27. President of the board

- a. The president of the board will call each session to order formally. (At each session, the time, date, place, and station will be entered in the record.)
- b. The president will explain to the respondent, the respondent's responsibilities, rights, and privileges, as follows:
 - (1) *Personal appearance and representation.* The respondent may appear and present evidence or be represented by counsel at all open proceedings of the board of officers. The respondent will not be reimbursed for expenses incident to the appearance or assistance of civilian counsel.
 - (2) *Request separation.* At any time prior to the final action by HQDA in the case, the respondent may—
 - (a) Apply for voluntary retirement, if eligible, when being considered for involuntary separation.
 - (b) Tender resignation.
 - (3) *Challenge members.* The respondent may challenge for cause any member of the board.
 - (4) *Availability of witnesses.*
 - (a) The respondent may request the appearance of witnesses before the board whose testimony is believed to be pertinent to the case. The attendance of witnesses must be voluntary and at no expense to the Government. In the event attendance is not possible, either a deposition or an affidavit will be obtained.
 - (b) The respondent will be advised of the names and addresses of witnesses expected to be called at the board hearing and that the recorder of the board will, upon request of the member, endeavor to arrange for the presence of any available witness the respondent wishes to call ((a) above). A copy of all affidavits and depositions of witnesses unable to appear at the board hearing will be furnished to the member.
 - (5) *Question witnesses.* The respondent or counsel may question any witness brought before the board.
 - (6) *Have access to records.* At all stages of the proceedings the respondent will be allowed full access to the records of the hearing, including all documentary evidence referred to the board, except when protection of classified documents is clearly consistent with the interest of National security. In such cases, the respondent will, to the extent that the National security permits (as determined by the Secretary of the Army) be furnished a summary of the information contained in the documents withheld.
 - (7) *Have knowledge of his past performance of duty.* The respondent has a right to this knowledge as it is reflected in his past evaluation reports.
 - (8) *Copy of board proceedings.* The respondent will be given a copy of the proceedings, less classified documents, if requested.
 - (9) *Present his personal case.* The respondent will be allowed to present his personal case without undue interference by the board. However, nonessential delaying tactics will not be tolerated.
 - (10) *Testify or remain silent.* The respondent may testify in person or elect to remain silent; but, when electing to testify, he may be required to submit to examination by the board as to any matter testified to—but not in contravention of the Uniform Code of Military Justice, Article 31. When electing to testify, the respondent is entitled to an explanation of his rights regarding self-incrimination and degradation under the Uniform Code of Military Justice, Article 31.
- c. The president will administer the oath to the recorder.
- d. The president will ensure that the board members are completely familiar with the involuntary separation policy expressed in this regulation and have examined and studied available documents pertaining to the hearing concerned.

2-28. Recorder

The recorder is responsible for the actions shown below.

- a. For the proper pursuit and handling of the Government's case.
- b. At the initial session, for reading the letter appointing the board.
- c. At each session for—
 - (1) Entering the record, the time, date, place, and station.
 - (2) Noting for the record, the presence of members of the board, the respondent, and the respondent's counsel, if any.
- d. For verbally presenting to the board of officers a resume of the entire case, when appropriate.

- e.* For administering the oath to members of the board (including the legal advisor), witnesses, and reporter.
- f.* For examining and cross-examining the witnesses called by the respondent or his counsel.

2-29. Respondent

- a.* Respondent and his counsel will be present at all open sessions of the board unless the respondent specifically states to the board that he desires that counsel not be present.
- b.* Before the hearing is terminated, the respondent will be asked to state for the record whether he has presented all available evidence in his behalf. If answered in the negative, the respondent will be required to make a concise statement of the substance of the expected evidence. The statement and any documentary evidence referred to will be included in the record of the hearing. Thereupon, the board will determine whether the respondent will be granted additional time to procure and present such evidence.

2-30. Spectators

Spectators will not be allowed to be present during the proceedings except those specifically requested by the respondent or authorized by the appointing authority. No person who is to be called as a witness will be present as a spectator.

2-31. Witnesses

Witnesses appearing before the board will be sworn. Boards of officers may call witnesses on the board's motion.

2-32. Legal adviser

The legal adviser is prohibited from taking part in presenting the case or cross-examining witnesses. He will be present at all open sessions and may be called on to advise on admissibility of evidence, arguments, motions or other contentions of counsel, procedures, and any other matter determined appropriate by the President of the board. The legal adviser will not, under any circumstances, give advice except as provided in paragraph 2-33*b*, in a closed session of the board of officers.

Section VI

Conclusion of Hearings

2-33. Deliberation

- a.* After presentation of closing arguments, the board of officers will meet in closed session. Except as provided in *b* below, only the voting members of the board shall be present in closed session.
- b.* Advice of legal advisor may be sought whenever necessary, but the board will be opened and the advice will be obtained in open session in the presence of the recorder, respondent, and his counsel. Such proceedings will be made a part of the record. However, after the board has determined its finding and recommendations, the board may request the presence of the legal advisor and the recorder in its closed session for the purpose of assisting the board in putting its findings and recommendations in acceptable format, and such proceedings shall be transcribed verbatim and made a part of the record.

2-34. Findings and recommendations

The board will determine its findings and recommendations by secret written ballot in closed session; a majority vote will decide any issue.

a. Findings. The board will make separate findings with respect to each allegation whether the respondent should be retained in the Army. A brief statement of the reason(s) (including factual data when considered necessary for clarification) for each finding will be included.

(1) Each finding must be a clear and concise statement of facts evidenced in the record or a conclusion which can be readily deduced from the evidence in the record.

(2) Each finding must be supported by substantial evidence; which is defined as such evidence as a reasonable mind can accept as adequate to support the conclusions.

b. Recommendations. The board will refer to paragraph 2-44 for homosexuality cases. Recommendation of the board must be appropriate to and warranted by the findings.

(1) Boards must make their recommendations according to the best of their understanding of the rules and regulations of the Army in consonance with the policies outlined in this regulation and other appropriate regulations, and guided by their conception of justice both to the Government and to the officer concerned.

(2) When the findings have been determined, the recommendations will be limited to the following: retention or involuntary separation.

(3) Recommendation for involuntary separation of an officer must also include a recommendation for the type of discharge certificate ((*a*) or (*b*) below) or the type of discharge ((*c*) below) to be issued.

(*a*) Honorable Discharge Certificate (DD Form 256A).

- (b) General Discharge Certificate (Under Honorable Conditions) (DD Form 257A).
- (c) Discharge (Under Other Than Honorable Conditions).

2-35. Report of proceedings

The board report will be an accurate account of its proceedings. It will contain a record of testimony presented and heard and all other formal conversation which took place during any and all of the open sessions of the board. It will contain a record of any closed session which required the presence of the legal advisor and the reporter. It will include true copies or true extract copies of any and all documents used as a basis for requiring the officer to show cause and all other documents which were accepted as evidence in the case in question. These documents must be legible and lend themselves to reproduction. Copies reproduced by the thermofax process or copies reproduced by other means which are barely legible and nonpermanent type reproduction will not be used. The report will be prepared, so far as possible, in accordance with the general instructions set forth in section III, chapter 3, AR 15-6. The report will include a statement that the findings and recommendations were determined by secret written ballot in closed session.

Section VII

Separation for Homosexuality

2-36. Purpose

This section establishes policy and provides procedures and guidance for separation of officer personnel for homosexuality.

2-37. Policy

a. Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the armed forces to maintain discipline, good order, and morale; to foster mutual trust and confidence among members; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of members who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of Armed Forces; to maintain the public acceptability of military service; and to prevent breaches of security.

b. Nothing in this section precludes separation in appropriate circumstances for another reason.

c. The provisions of this section do not preclude trial by court-martial in appropriate cases. Conviction by a court-martial which did not impose a punitive discharge does not prevent separation action under this section.

2-38. Definitions

For the purpose of this section the following apply:

a. Homosexual means a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts.

b. Bisexual means a person who engages in, desires to engage in, or intends to engage in homosexual and heterosexual acts.

c. A homosexual act means bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires.

2-39. Criteria

The basis for separation may include preservice, prior service, or current service conduct or statements. A member shall be separated under the provisions of this section if one or more of the following approved findings is made:

a. The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are approved further findings that:

(1) Such conduct is a departure from the member's usual and customary behavior.

(2) Such conduct under all circumstances is unlikely to recur because it was solely the result of immaturity, intoxication, coercion, or a desire to avoid military service.

(3) Such conduct was not accomplished by use of force, coercion, or intimidation by the member during a period of military service.

(4) Under the particular circumstances of the case, the member's continued presence in the service as an officer of the Army is consistent with the interest of the Army in proper discipline, good order, and morale; and

(5) The member does not desire to engage in or intend to engage in homosexual acts. Note: To warrant retention of a member after finding that he or she engaged in or attempted to engage or solicited another to engage in a homosexual act, the board's findings must specifically include *all five* findings listed in a (1) through (5) above. In making these additional findings, boards should reasonably consider the evidence presented. For example, engagement in homosexual acts over a long period of time could hardly be considered "a departure from the member's usual and customary

behavior.” The intent of this policy is to permit retention *only* of *nonhomosexual* soldiers who, because of extenuating circumstances (as demonstrated by findings required by paras 2–39a (1) (through (5)), engaged in, attempted to engage in, or solicited a homosexual act.

b. The member has stated that he/she is a homosexual or bisexual unless there is a further finding that the member is not a homosexual or bisexual.

c. The member has married or attempted to marry a person known to be of the same biological sex (as evidence by the external anatomy of the persons involved) unless there are further findings that the member is not a homosexual or bisexual (e.g., where the purpose of the marriage or attempt to marry was the avoidance or termination of military service).

2–40. Type of discharge

a. A discharge under other than honorable conditions may be issued if there is a finding that during the current term of service the member attempted, solicited, or committed a homosexual act—

- (1) By using force, coercion, or intimidation.
- (2) With a person under 16 years of age.
- (3) With a subordinate in circumstances that violate customary military superior-subordinate relationships.
- (4) Openly in public view.
- (5) For compensation.
- (6) Aboard a military vessel or aircraft; or
- (7) In another location subject to military control if the conduct had, or was likely to have had, for reasons indicated in the findings, an adverse impact on discipline, good order, or morale due to the close proximity of other members of the Army Forces under circumstances in which privacy cannot reasonably be expected.

b. In all other cases, the type of discharge will reflect the character of the member’s service, in accordance with chapter 1.

2–41. Action by unit commander

If there is any credible evidence to believe that a basis for separation exists under paragraph 2–39, the unit commander of the member will:

- a. Initiate an investigation in accordance with paragraph 2–18.
- b. Insure that an appropriate medical examination and mental status evaluation are obtained as prescribed in paragraph 2–7, when a member is to be processed for separation.
- c. Recommended elimination if appropriate.

2–42. Action by intermediate commanders

The intermediate commanders may take one of the following actions:

- a. Recommend disapproval of the recommendation because there is not sufficient evidence that one or more of the circumstances authorizing separation under paragraph 2–39 has occurred.
- b. Recommend approval of the commander’s recommendations and forward the report to the area commander.

2–43. Action by area commander

On receiving a recommendation for separation for homosexuality, the commander may take one of the following actions:

- a. Disapprove the recommendation, close the case, and return it to the originator because there is not sufficient evidence that one or more of the circumstances authorizing separation under 2–39 has occurred.
- b. Approve the recommendation and proceed as indicated in paragraph 2–17e.

2–44. Recommendations of boards of officers

A board convened to determine whether a member should be separated for homosexuality will follow the procedures authorized in appropriate paragraphs of this regulation, except:

- a. If the board finds that one or more of the circumstances authorizing separation under paragraph 2–39 is supported by the evidence, the board shall recommend involuntary separation, unless the board finds that retention is required under the limited circumstances described in paragraph 2–39.
- b. If the board does not find that there is sufficient evidence that one or more of the circumstances authorizing separation under paragraph 2–39 has occurred, the board shall recommend retention unless the case involves another basis for separation of which the member has been duly notified.
- c. The burden of proving that retention is required under the limited circumstances described in paragraph 2–39 rests with the member except in cases where the member’s conduct was solely the result of a desire to avoid or terminate military service.

d. Findings regarding the existence of the limited circumstances requiring a member's retention set forth in paragraph 2-39 are required only if—

- (1) The member clearly and specifically raises such limited circumstances; or
- (2) The board relies on such circumstances to justify the member's retention.

Chapter 3

Dropped From the Rolls of the Army

3-1. General

This chapter prescribes the criteria and procedures whereby the status of a Reserve officer of the Army will be terminated by dropping him from the rolls of the Army.

3-2. Scope

a. These provisions are applicable to officers of the USAR, including those who become members thereof by reason of withdrawal of Federal recognition from the ARNGUS for reasons outlined in paragraph 3-3.

b. (*Rescinded.*)

3-3. Criteria for dropping from the rolls

Officers may be dropped from the rolls of the Army for the following reasons:

a. Absence without proper authority from scheduled unit training for at least 3 months. However, officers who can be located will not be dropped from the rolls but will be processed for involuntary separation in accordance with chapter 2.

b. Sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a civil court, provided the sentence has become final, whether or not the officer is actually confined. For purposes of this regulation, a conviction is final when the time for an appeal as of right has expired or final action on an appeal has been taken.

3-4. Preparation and forwarding

Commanders who receive information which appears to be of such nature as to warrant dropping an individual from the rolls under conditions specified in paragraph 3-3 will transmit such information, through channels, to the commander indicated in paragraph 3-5, as appropriate, for final determination. The letter will include:

- a. A detailed statement of the basis for which the individual may be dropped from the rolls.
- b. All available documentary evidence which purports to support the recommendation, and
- c. When appropriate, a certified copy of the order of the court which convicted the officer or letter from the warden of the penitentiary or correctional institution stating that the officer has been received for confinement.

3-5. Authority to drop from the rolls

The following commanders are authorized to drop an officer under their command or jurisdiction from the rolls of the Army, except in those cases where the officer is entitled to retired pay as a result of completion of 20 years active Federal service, in which event approval of Headquarters, Department of the Army is required:

- a. Area commanders.
- b. Cdr, ARPERCEN.

3-6. Procedures

a. The appropriate commander will issue orders dropping the officer from the rolls of the Army. Orders will be published in the format prescribed in AR 310-10.

b. No official discharge certificate will be issued.

c. (*Rescinded.*)

Chapter 4

Discharge of Army Reserve Officers

Section I

General

4-1. General

a. This chapter describes conditions under which USAR officers may be discharged from their status as Reserves of the Army and prescribes criteria for discharging them.

b. When Federal recognition of ARNGUS officers is withdrawn for reasons in paragraphs 4-4a(10) and (11), those officers will be discharged from Reserve status as members of the USAR, unless they are qualified and apply for transfer to the Retired Reserve.

c. Discharge of an officer from his appointment as a Reserve of the Army also terminates membership in the USAR.

d. Officers separated under the provisions of this chapter will be discharged under honorable conditions and issued either an Honorable or a General Discharge Certificate, as determined by the discharge authority.

e. A member of the USAR who has at least 3 years of service as a commissioned officer may not be discharged without his consent, except under an approved recommendation of a board of officers convened by an authority designated by the Secretary of the Army, by the approved sentence of a court-martial, or as otherwise specifically provided by law (10 USC 1163(a)). Accordingly, the conditions and procedures which establish the basis for discharge in paragraph 4-4 are explained as follows:

(1) Conditions for discharge listed in paragraph 4-4a are specifically authorized by law or are conditions for which another regulation requires a board consideration of discharge. In each instance, the applicable statute or the regulation under which board action is accomplished is included in parentheses at the end of the paragraph.

(2) An officer who has at least 3 years commissioned service and does not consent in writing to discharge, will be discharged for a condition listed in paragraph 4-4b only on the recommendation of a board of officers. The board will be convened by the commander concerned and will be appointed and conduct the proceedings as prescribed in sections IV through VI of chapter 2. The officer will be extended the privileges listed in paragraph 2-19. The function of the board will be to determine whether or not the ground for discharge exists. If the board finds the ground does exist in the respondent's case, discharge must be recommended.

4-2. Authority

Except as otherwise provided in this regulation, the authority to approve discharge of an officer under this chapter is delegated as follows and may not be further delegated:

a. Area commanders and the Cdr, ARPERCEN may approve discharge in those instances where it is not necessary to obtain the officer's consent and in those instances where the officer consents in writing to discharge when otherwise a board would be required.

b. When an officer's consent is required and that consent is not given, area commanders are authorized to take final action on board findings and recommendations to include those cases referred to them by the Cdr, ARPERCEN.

Section II

Discharge Criteria

4-3. General

(Rescinded.)

4-4. Removal from an active status.

a. Members of the Army Reserve will be removed from an active status for any of the reasons in (1) through (18) below, with or without the officer's consent regardless of the length of commissioned service (AR 140-10). Removal will be by discharge, transfer to the Retired Reserve (if eligible and requested by the member) or, if eligible, transfer to Control Group (Inactive).

(1) *Medical unfitness.* When found to be medically unfit to perform active duty (10 USC 1004), except when the officer—

(a) Has been approved for continuance in an active status under the provisions of AR 140-120.

(b) Has incurred a disability in the line of duty and is eligible for processing under the provisions of pertinent medical regulations.

(2) *Maximum age.* Attaining maximum allowable age, as prescribed in AR 140-10 (10 USC 1003 and 1164).

(3) *Length of service.* Completion of maximum authorized years of service as prescribed in AR 140-10 (10 USC 3848 and 3851).

(4) *Failure to qualify for promotion from W-1 to W-2.* When a warrant officer W-1, who has completed his statutory military service obligation, fails to qualify for promotion to W-2 (AR 135-155).

(5) *Nonselection for promotion after second consideration.* An officer in the grade specified below, who has completed his statutory military service obligation, will be discharged for failure to be selected for promotion after second consideration by a DA Reserve Components selection board.

(a) A chief warrant officer, W-2 or W-3 (135-155).

(b) A first lieutenant, captain, or major (AR 135-155) (10 USC 3846).

(6) *Failure to earn sufficient retirement points for retention. (Rescinded.)*

(7) *General officers ceasing to occupy commensurate positions.* A general officer (not on active duty) who ceases to occupy a position commensurate with his grade or higher grade is required to be removed from an active status within 30 days from the date he ceases to occupy such position (10 USC 3375). Discharge will be accomplished when he—

(a) Submits an election for discharge within 30 days from the date he ceases to occupy commensurate position, or

(b) Fails to submit an election under AR 140-10 within a reasonable period of time after he is required to be removed from an active status.

(8) *Selection for removal from an active status.* When a warrant officer or commissioned officer in the grade of colonel or below with 20 years or more of qualifying service for retired pay is recommended by a board of officers for removal from an active status and the Secretary of the Army approves the recommendation (10 USC 3850).

(9) *Exemption from involuntary active duty.* On the approved recommendations of a board of officers that an officer should be exempted from involuntary active duty and that he should be discharged (AR 601-25).

(10) *Lack of required qualifications for retention in the Army National Guard.* When the Federal recognition of an ARNG officer is withdrawn by reason of lack of required qualifications for retention in the ARNGUS of the appropriate State (10 USC 3820 and 32 USC 323(b)).

(11) *Withdrawal of Federal recognition for failure to retire technical waiver.* When the Federal recognition of the ARNGUS officer is withdrawn for failure to retire technical waiver (NGR 600-100, 10 USC 3820, and 32 USC 323(b)).

(12) *Nonavailability of Standby Reserve officer.* When a nonavailable Standby Reserve officer continues to be unavailable for active duty 12 months after initiation of general mobilization (AR 601-25).

(13) *Failure to complete a basic branch course.* Officers appointed on or after 1 December 1969 as a result of completion of ARNG or USAR OCS, and direct appointees who fail to complete a branch course within 36 months of effective date of appointment (AR 140-10).

(14) *Failure to complete military educational requirements.* Effective 1 July 1972, when an officer fails to complete the military educational requirements in table 2-2; AR 135-155 (AR 140-10).

(15) *Nonacceptance of assignment by nonobligated officer.* Any nonobligated officer member of the individual Ready Reserve who refused to accept assignment to a USAR unit, Individual Mobilization Augmentation assignment or attachment to a USAR unit (AR 140-10).

(16) *Failure to apply for transfer to the Retired Reserve on removal from active status.* An officer who is removed from active status for any reason listed above will be discharged if he is eligible and fails to apply for transfer to the Retired Reserve within 30 days from the date he is advised that he is being removed from active status.

(17) *Failure or refusal to provide mailing address.* Any noncitizen officer who, at the time of release from active duty, fails or refuses to give a mailing address within the United States, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone.

(18) *Failure of Judge Advocate General's Corps officers to become educationally qualified within specified time limits.* Judge Advocate General's Corps officers who fail to satisfy the educational qualification requirements of Army Regulation 135-316 within the time limits prescribed in Army Regulation 135-100 will have their commissions terminated (in cases of U.S. Army Reserve officers) and their commissions terminated and their Federal recognition withdrawn (in cases of Army National Guard officers). The Judge Advocate General may grant an exception to this automatic termination provision provided the commander concerned recommends such exception and sufficient cause is shown.

b. An officer will be discharged for any one of the reasons in (1) through (9) below without his consent if he has less than 3 years of commissioned service, or with his consent if he has at least 3 years of commissioned service. If an officer who has at least 3 years of commissioned service does not give his consent, discharge will be accomplished only on the approved recommendations of a board of appointed officers, as prescribed in paragraph 4-1e.

(1) *(Rescinded.)*

(2) *(Rescinded.)*

(3) *Loss of ecclesiastical endorsement.* On withdrawal of ecclesiastical endorsement, other than for cause, of a chaplain unless he is qualified, applies for, and receives approval of a branch transfer (AR 140-10).

(4) *Chaplain candidates, appointed and assigned to staff specialist branch (SSI 00A).* A Chaplain candidate, so appointed and assigned, pending his eligibility for assignment to chaplain branch, will be discharged as shown in (a) and (b) below unless he is qualified and receives approval of a branch transfer (AR 140-10).

(a) On withdrawal of ecclesiastical endorsement.

(b) On withdrawal from the seminary in which he was enrolled prior to completing the course of instruction and

failure to enroll in another recognized seminary within a period of 1 year. As an exception to this discharge provision, ROTC graduates who are appointed staff specialists (SSI 00A) and fail to complete their courses of instruction will be ordered to active duty or ADT and to serve in the USAR in the branch in which they were originally commissioned on completion of ROTC training.

(c) For failure to apply for assignment to the Chaplain Branch (via appointment or branch transfer, whichever is appropriate) within 3 years after graduation and ordination (Eligibility for such assignment includes ecclesiastical endorsement.)

(5) *Loss of license or disbarment from professional practice.* An officer of the professional service in the Medical, Dental, or Veterinary Corps as well as those specialists allied to medicine or an officer in the Judge Advocate General's Corps whose license is terminated or is otherwise disbarred from practice, will be discharged under the provisions of this chapter, unless the circumstances warrant involuntary separation action (chap 2).

(6) *Employment with a foreign government.* Unless prior written approval is obtained from ASA (M&RA) and the Department of State, an officer who is not receiving retired pay will be discharged by reason of acceptance of civil employment with a foreign government agency or instrumentality of the foreign government whether or not compensation is received (AR 600–291).

(7) *Administrative separation.* Officers who are determined administratively unfit to perform military duty by appropriate military authority based on objective evidence of such unfitness (e.g., medical evaluation made pursuant to AR 40–501, 32.2, or 3–32.3), will be discharged. Board action is not required in those instances involving commissioned officers who have less than 3 years commissioned service.

(8) *Failure to complete eligibility requirements for appointment.* Officers appointed under special programs prior to completing their eligibility requirements for the appointment and who subsequently failed to complete these requirements may be discharged. (AR 135–101, para 1–5g).

(9) *Failure to receive a favorable background investigation and/or national agency check.* Officers who have been commissioned through accelerated processing procedures but whose entry on active duty is delayed pending completion of residency or internship and who subsequently do not receive a favorable background investigation and/or national agency check will be discharged.

4–5. Removal from the inactive status list of the Standby Reserve

An officer will be discharged by reason of removal from this list when his removal is required (AR 140–10), unless he is eligible for transfer to an active status or is eligible and applies for transfer to the Retired Reserve.

4–6. Failure to qualify for promotion to first lieutenant

An officer in the grade of second lieutenant who has completed the required statutory military service obligation will be discharged on being considered but not recommended for promotion by the appropriate commander on or before the date on which the officer completes 3 years of promotion service (10 USC 3819).

4–7. Bona fide conscientious objectors

See AR 600–43.

4–8. Incompatible status

a. An officer will be discharged for the following reasons, contingent on acceptance of his conditional resignation (sec II, chap 6):

(1) On acceptance of appointment in one of the following uniformed services:

(a) The United States Public Health Service, including the Reserve components thereof.

(b) The Environmental Science Services Administration.

(2) On enlistment or acceptance of appointment with another Armed Force, including the Reserve components thereof. The term “Armed Force” includes the following uniformed services under the conditions in (a) and (b) below.

(a) The United States Public Health Service *when it is designated as a military service* (Sec. 216, Act of 1 July 1944 (58 Stat 690; 42 USC 217)).

(b) The Environmental Science Service Administration *when it is transferred to the Army or Navy in time of war* (Sec. 16, Act of 22 May 1917 (40 Stat 87; 33 USC 855)).

b. Effective date of discharge will be the date preceding the date officer executes oath for enlistment or appointment in the new status.

4–9. Regular Army warrant officer promotion nonselection after second consideration

A Regular Army warrant officer holding an appointment as a Reserve commissioned officer of the Army who is separated or retired as a result of having been twice nonselected for promotion to the next higher permanent warrant officer grade will be discharged from his commissioned status on the same date on which he is separated or retired

(AR 635–100) unless he is eligible and applies for transfer to the Retired Reserve in his commissioned grade. In this event, he will be separated only from his warrant status (10 USC 564).

4–10. Removal from the Temporary Disability Retired List

An officer with no remaining statutory military service obligation who is found physically fit to perform military duties on removal from the Temporary Disability Retired List will be discharged if he elects not to accept reappointment on removal from this list (AR 135–100).

4–11. Pregnancy or childbirth

Female officers who are pregnant or who have given birth to a living child during their present appointment will not be involuntarily released except when action under chapter 2 is warranted. They may request discharge; transfer to Retired Reserve, if eligible, except that female officers who incur an active duty obligation as a result of a Federally subsidized program are eligible for discharge or transfer to Retired Reserve under provisions of this paragraph only after completion of the required period of active duty.

- a.* This request for removal will be submitted in the format shown on figure 4–1. (See AR 135–91, chap 4, sec V.)
- b.* This request will be forwarded either to the area commander or to Cdr, ARPERCEN for final action.
- c.* Leave of absence will be granted in accord 91, paragraph 4–25.
- d.* A resignation accepted under this paragraph will be under honorable conditions. An Honorable Discharge Certificate (DD Form 256A) or General Discharge Certificate (DD Form 257A) will be furnished based on the officer's military record during period of service from which she is being separated.
- e.* If it has been determined by physician that a pregnancy has been terminated by other than a live birth, the officer may withdraw request for removal.

Chapter 5

Vacation and Revocation of Appointment

5–1. General

- a.* This chapter outlines the conditions under which an officer of the ARNGUS or USAR automatically vacates his appointment as a Reserve of the Army because of entry into another military status which is incompatible with his Reserve status at the time of such entry.
- b.* Administrative action is not required to accomplish automatic vacation of appointment. However, for record purposes only, a letter of notification of vacation of appointment will be issued in accordance with the format in figure 5–1, except when vacation of appointment is the result of promotion to the next higher grade. Such letters will be issued by the appropriate area commander, or the Cdr, ARPERCEN.
- c.* No formal discharge certificate will be issued.
- d.* The appointment as a Reserve officer of the Army is vacated effective the date immediately preceding the date the officer enlists, or executes oath of office for appointment, in the new military status. Under these conditions, the ARNGUS officer does not become a member of the Army Reserve.

5–2. Conditions under which appointment is automatically vacated

The Reserve appointment of any officer is automatically vacated under the conditions outlined below, except where specifically limited to an ARNGUS or USAR officer, commissioned or warrant.

- a.* An officer automatically vacates his Reserve appointment when he accepts an appointment as a cadet or midshipman for entrance into the United States Military, Naval, Air Force, or Coast Guard Academy.
- b.* A commissioned officer vacates his Army Reserve appointment when he—
 - (1) Accepts a Regular Army appointment in a commissioned grade.
 - (2) Accepts a promotion to a higher Reserve grade.
 - (3) Enlists as a Reserve for service in the ARNGUS or USAR.
- c.* A USAR commissioned officer vacates his Reserve appointment when he—
 - (1) Accepts Federal recognition as a Reserve of the Army for service in the ARNGUS.
 - (2) Accepts an appointment as a Reserve of the Army, in the warrant officer grade, for service in the Army Reserve.
 - (3) Retires as a Regular Army enlisted person and is transferred in such enlisted status to the Army Reserve (Retired) (10 USC 3914) (AR 635–200).
 - (4) Enlists as a Reserve of the Army for service in the ARNGUS or USAR.
 - (5) (*Rescinded.*)
- d.* A USAR warrant officer vacates his Reserve appointment when he—
 - (1) Accepts a Regular Army appointment as a warrant or commissioned officer.

- (2) Accepts a Reserve appointment in a commissioned grade for service in the Army Reserve.
- (3) Enlists as a Reservist for service with either the ARNGUS or USAR.
- (4) Accepts an appointment as a Reserve of the Army for service in the ARNGUS.

5-3. Revocation of appointment

When it is found that a Reserve commissioned or warrant officer was appointed in error, the appointment will be revoked. The officer will be notified by letter (fig 5-2).

Chapter 6 Resignations

Section I General

6-1. General

This chapter prescribes the means and procedures governing the submission of resignations which may be submitted by Reserve officers of the Army.

6-2. Scope

The provisions of this chapter apply to ARNGUS and USAR officers, except where such provisions are specifically limited to USAR officers. Voluntary requests for resignation under this regulation may be accepted only from a member who is mentally competent at the time he submits such request. For determination as to medical conditions, provisions of paragraph 2-6 will apply.

6-3. Procedures

a. Resignations will be prepared in accordance with the appropriate format prescribed in figures 1 through 6-5 and will include the following information:

- (1) Officer's present assignment and attachment, if any.
- (2) Reason(s) for submission of resignation.
- (3) Documentary evidence, when appropriate, to substantiate given reason(s) for submission of resignation.

b. Resignations will be submitted through appropriate military channels to the commander authorized to take final action thereon. In those instances where final action is restricted to Headquarters, Department of the Army, the resignation will be forwarded by the appropriate commander together with remarks and recommendations PAP-SS.

c. Obligated officers who have not performed their required period of active duty or ADT. An obligated officer who has not performed his required period of active duty or ADT (para 1-4d) may submit a conditional resignation; however, it will be accepted only under very exceptional circumstances involving national health, safety, or interest.

Section II Conditional Resignations

6-4. General

a. Officers may submit a conditional resignation in accordance with format in figure 6-1 to obtain a conditional release for any one of the following purposes:

- (1) To apply for appointment in—
 - (a) A regular component of another Armed Force.
 - (b) The Regular or Reserve component of the U.S. Public Health Service.
 - (c) The Environmental Science Services Administration.
- (2) To apply for enlistment in a Regular or Reserve Component of another Armed Force.

b. Applications for appointment in a Reserve component of another Armed Force will be submitted and processed in accordance with AR 140-10. Discharge will be accomplished as set forth in paragraph 4-8.

6-5. Authority to accept conditional resignations

Area commanders and Cdr, ARPERCEN are authorized to accept conditional resignations submitted by officers under their command or jurisdictional control, as outlined in paragraph 6-6.

6-6. Criteria for conditional resignations

Conditional resignations may be accepted only under the conditions outlined below.

a. Nonobligated officers. A conditional resignation must be accepted from a nonobligated officer on his application, except under the conditions outlined in paragraph 6–10b.

b. Obligated officers who have performed their required period of active duty or ADT. An obligated officer who has performed his required period of active duty or ADT may be granted a conditional release under the following conditions to apply for:

(1) Enlistment or appointment in a Regular component of another Armed Force.

(2) Appointment in the Regular component of the U.S. Public Health Service or in the Environmental Science Services Administration.

(3) Appointment in the Reserve component of the U.S. Public Health Service provided the officer has special experience or professional, educational, or technical background which is clearly of greater use to the gaining service and which outweighs the value of his previous training.

c. Obligated officers who have not performed their required period of active duty or ADT. An obligated officer who has not performed his required period of active duty or ADT (glossary) may submit a conditional resignation; however, it will be accepted only under very exceptional circumstances involving national health, safety, or interest.

6–7. Processing conditional resignations

Conditional resignations will be processed expeditiously in accordance with the provisions outlined below.

a. Conditional resignations from obligated officers who have not performed their required period of active duty or ADT will be forwarded as set forth in paragraph 6–3b.

b. Conditional resignations submitted by officers, other than those outlined in *a* above, will be processed through channels to the appropriate commander who will inform the officer of the action taken as follows:

(1) If accepted, the officer will be furnished a signed official statement that his conditional resignation is accepted and will become effective on his acquisition of new status in another Armed Force or in the Uniformed Services.

(2) If not approved, the resignation will be returned to the officer together with a statement showing reasons for nonacceptance.

Section III

Unqualified Resignations

6–8. General

This section provides for means and procedures governing the submission of unqualified resignations as Reserve officers of the Army and the conditions under which such resignations may be accepted.

6–9. Authority to take final action

a. Headquarters, Department of the Army reserves the authority to take final action on unqualified resignation submitted by obligated officers, except as otherwise provided in *b*(2) and (3) below. All such resignations will be forwarded as set forth in paragraph 6–3.

b. Authority to take final action on unqualified resignations submitted by officers specified below is delegated to the appropriate area commander and the Cdr, ARPERCEN.

(1) A nonobligated officer.

(2) An obligated officer who is a chaplain.

(3) An obligated officer when his resignation is based on religious reasons (para 6–10a(2)).

6–10. Criteria for unqualified resignations

The following circumstances provide the basis and will be used as a guide in determining final action on unqualified resignations.

a. Obligated Officers. Normally, an obligated officer will not be permitted to resign his office until such time as the obligated period of service is completed, except as otherwise provided below.

(1) HQDA may approve acceptance of a resignation in cases involving extreme compassionate circumstances; or, when such action is deemed to be in the best overall interest of the officer and the Army.

(2) A resignation will be accepted when submitted by an officer who—

(a) Is a chaplain.

(b) Becomes a regular or duly ordained minister of religion.

(c) Must be separated from his military status for the purpose of obtaining ordination to take final vows in a religious order.

b. Nonobligated officers. Resignations submitted by nonobligated officers may be accepted, except under the conditions outlined below:

(1) The officer is under investigation or charges, being considered for administrative involuntary separation, in the hands of civil authorities, insane, or in default with respect to public property or public funds.

(2) In time of war or national emergency declared by Congress.

(3) When HQDA, by separate instructions, restricts the acceptance of such resignations due to national emergency proclaimed by the President or under other conditions which may necessitate such action (i.e., peacetime expansion of the Active Army).

6-11. Procedures

a. Resignations will be submitted in accordance with the format in figure 6-2.

b. Resignations submitted by obligated officers based on religious reasons will be substantiated by appropriate documentary evidence specified below.

(1) A statement from the appropriate authority of the church, religious sect, or organization that the individual has met the requirements for recognition as a regular or ordained minister of religion.

(2) A statement from an appropriate authority of the local organization or congregation, which the military member serves, that the member is employed full-time in a religious occupation, as a minister of religion (see consolidated glossary).

(3) A statement from appropriate authority of the religious order that as a divinity student the military member—

(*a*) Is fully qualified and acceptable for further religious training.

(*b*) Must be separated from military status for further theological education or processing into the religious order or organization.

(*c*) If separated, will be eligible for ordination or recognition as a minister on or about a specified date.

(4) A statement from the seminary or other educational institution in which the religious training is now or will be received that the individual is now or will be, concurrent with discharge, a full-time divinity student preparing for the ministry.

c. Confirmation of acceptance of resignation will be announced in accordance with the orders format prescribed in AR 310-10.

Section IV

Resignation in Lieu of Involuntary Separation

6-12. General

a. An officer who has been notified of being considered for involuntary separation may submit a resignation at any time prior to final action taken on the board proceedings.

b. Commanders will ensure that there is no element of coercion in connection with a resignation in lieu of involuntary separation and that the officer concerned is allowed at least 10 days after notification of impending involuntary separation to make a personal decision when resignation is contemplated.

c. A resignation will automatically suspend involuntary separation action pending final action on the resignation.

6-13. Authority to take final action on resignations in lieu of involuntary separation

The authority to take final action on resignations in lieu of involuntary separation is restricted to HQDA (para 2-8*a*).

6-14. Procedures

a. The resignation of an officer whose case falls within the purview of AR 604-10 (interests of the National security) will be processed as specified in that regulation.

b. Except as otherwise provided in *a* above and *c* below, the resignation of an officer under consideration for involuntary separation for substandard performance of duty (para 2-11) will be submitted in the format in figure 6-3.

c. The resignation of an officer under consideration for involuntary separation for moral or professional dereliction (para 2-12) or in the interest of National security (para 2-14) will be submitted in the format indicated in figure 6-4.

d. Resignations will be processed as set forth in paragraph 6-3*b*. The type of discharge will be determined by HQDA.

e. The Cdr, ARPERCEN will accomplish administrative separation of officers, under the jurisdictional control of that Center, whose resignation in lieu of involuntary separation has been accepted by HQDA.

Section V

Resignation of Personnel Who Do Not Meet the Medical Fitness Standards at Time of Appointment

6-15. General

Reserve component commissioned officers who have less than 3 years commissioned service and Reserve component warrant officers who have less than 3 years service since accepting initial appointment in their present component, who did not meet the medical fitness standards when accepted for appointment but met the medical standards for retention, may submit a resignation under this section.

6-16. Procedures

Eligibility for resignation under this section will be governed by the following:

- a.* A medical board finding that the individual has a medical condition which—
 - (1) Would have permanently disqualified the member for entry into the military service had it been detected at the time of acceptance for appointment.
 - (2) Does not disqualify the member for retention in the military service under the provisions of AR 40-501, chapter 3.
 - (3) Was not service-aggravated. However, a service-aggravated condition which does not disqualify for retention under AR 40-501, chapter 3, does not preclude eligibility for resignation.
- b.* Resignation must be submitted within the time frame indicated in paragraph 6-15.

6-17. Preparation and forwarding

Resignation will be prepared in accordance with figure 6-5 and forwarded with the medical board proceedings through appropriate channels to Cdr, ARPERCEN for determination.

6-18. Discharge certificate issued

An Honorable Discharge Certificate (DD Form 256A) will be issued.

(Date)

HQ, 118th Infantry Division, Fort Jackson, South Carolina

Counsel within the meaning of AR 135-175, is unable to represent Second Lieutenant John A. Doe, 000-00-0000, of this command, whose case has been referred to a board of officers convened under AR 135-175, chapter 2.

Captain James R. Cronkite, 000-00-0000, Infantry, is appointed counsel for the above named individual. Captain Cronkite has performed 10 years of active service. During this time he has acted as recorder and as counsel for respondents before discharge boards. He also has served as a summary court and as a trial and defense counsel in special courtmartial. (*State other qualifications.*) This officer's mature judgment and his knowledge of board procedures qualify him to act as appointed counsel in this case.

(signature of commanding officer)

Figure 1-1. Example of statement of nonavailability and appointment of counsel

SUBJECT: Request for Removal from Active Status or Discharge

TO: (*commander concerned*)

1. I, (*name*), (*grade*), (*branch*), (*SSN*), tender my request for relief from an active status or discharge from the Army Reserve under the provisions of AR 135-175, paragraph 4-11, to be effective (*date*) or as soon as practical thereafter.

2. My present USAR assignment is

3. I desire (*elect one option*)

() Discharge.

() Transfer to Retired Reserve, if eligible.

4. I am attaching a certificate of pregnancy or birth.

Attachment

Figure 4-1. Format for request for removal from active status or discharge (pregnancy or childbirth)

SUBJECT: Vacation of Reserve Appointment

TO: *(member concerned)*

1. Your appointment as a Reserve *(commissioned)* or *(warrant)* officer of the Army was vacated on your¹
2. No formal discharge will be issued you by reason of this vacation of your appointment.

FOR THE COMMANDER:

¹Indicates status acquired, reference paragraph 5-2a, b, c, or d, AR 135-175.

Figure 5-1. Format for vacation of reserve appointment

SUBJECT: Revocation of Appointment

TO: *(member concerned)*

1. Your appointment as a Reserve *(commissioned)* *(warrant)* officer of the Army has been revoked. You were ineligible for appointment.
2. No formal discharge will be issued.

Figure 5-2. Format for revocation of appointment

SUBJECT: Conditional Tender of Resignation

TO:

1. I, John Doe, Captain, Infantry, SSN 000-00-0000, hereby submit a conditional tender of resignation as a Reserve officer of the Army, USAR under the provisions of . . . , AR 135-175.
2. I am submitting this conditional tender of resignation for the purpose of obtaining a conditional release in order that I may apply for *(enlistment)* *(appointment)* in . . .
3. My reason(s) for applying for *(enlistment)* *(appointment)* in another service is . . .
4. I am presently assigned to . . . *(add the following, if appropriate)* and attached to . . .
5. I understand that my conditional tender of resignation will not be effective until such time as I have been *(enlisted)* *(appointed)* in the gaining service and executed an oath of office for such *(enlistment)* *(appointment)*.

Figure 6-1. Format for conditional tender of resignation

SUBJECT: Unqualified Resignation

TO: *(appropriate commander)*

1. I, John Doe, Captain, Infantry, SSN 000-00-0000, hereby tender my unqualified resignation as a Reserve officer of the Army, USAR, under the provisions of . . . , AR 135-175.

2. I am submitting this resignation because . . .

(If documentary evidence is required to be attached to resignation, add the following statement.) The enclosed statements are attached as documentary evidence substantiating my reasons for resigning.

3. I am presently assigned to . . . (add, if appropriate) and attached to . . .

4. I understand that if my resignation is accepted, I am entitled to an honorable separation and will be furnished an Honorable Discharge Certificate.

Figure 6-2. Format for an unqualified resignation

SUBJECT: Resignation in Lieu of Elimination Proceedings

TO:

1. I, John Doe, Captain, Infantry, SSN 000-00-0000, having been informed that I am being considered for involuntary separation, do hereby voluntarily tender my resignation as a Reserve officer of the Army, ARNGUS (**USAR**) under the provisions of . . . , AR 135-175.

2. I have been advised of the reasons for initiation of involuntary separation action, of my right to appear before a board of officers, to be represented by counsel, to submit a brief in my behalf, and any other statements, to present witnesses in my behalf, and to have a reasonable time (*at least 30 days*) to prepare my case.

3. I hereby waive these rights with the understanding that if my resignation is accepted, I will be separated under honorable conditions and will be furnished an Honorable Discharge Certificate.

Figure 6-3. Format for resignation in lieu of involuntary separation proceedings if for substandard performance of duty (para 2-11)

SUBJECT: Resignation in Lieu of Elimination Proceedings

TO:

1. I, John Doe, Captain, Infantry, SSN 000-00-0000, having been informed that I am being considered for involuntary separation, do hereby voluntarily tender my resignation as a Reserve officer of the Army, ARNGUS (*USAR*) under the provisions of . . . , AR 135-175.

2. I have been advised of the reasons for initiation of involuntary separation action, of my right to appear before a board of officers, to be represented by counsel, to submit a brief in my behalf, and any other statements, to present witnesses in my behalf, and to have a reasonable time (at least 30 days) to prepare my case.

3. I hereby waive these rights with the understanding that if my resignation is accepted, I may be separated either under honorable conditions or under conditions other than honorable. I also understand that I may be furnished an Honorable or General Discharge Certificate, or Other Than Honorable Conditions Discharge, as determined by Headquarters, Department of the Army.

Figure 6-4. Format for resignation in lieu of involuntary separation proceedings for moral or professional dereliction (para 2-12) or in the interests of National Security (para 2-14)

SUBJECT: Resignation for Failure to Meet the Medical Fitness Standards at Time of Appointment

TO:

1. I, John Doe, 2LT, Infantry, SSN 000-00-0000, hereby tender my resignation as a Reserve officer of the Army, USAR, under the provisions of . . . , AR 135-175.

2. I am presently assigned to . . . (*add, if appropriate*) and attached to . . .

3. I understand that if my resignation is accepted, I am entitled to an honorable separation and will be furnished an Honorable Discharge Certificate.

4. Attached are current medical examination reports, Standard Forms 88 and 93, and (*if applicable*) a serology report and electrocardiogram.

Figure 6-5. Format for resignation for failure to meet the medical fitness standards at time of appointment

Appendix A

References

Section I

Required Publications

AR 15–6

Procedure for Investigating Officers and Boards of Officers. (Cited in paras 2–17*c*, 2–17*f*, 2–17*g*, 2–23*c* and 2–35.)

AR 40–501

Standards of Medical Fitness. (Cited in paras 4–4*b* and 6–16*a*.)

AR 135–91

Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures. (Cited in paras 2–12*i* and 4–11*c*.)

AR 135–100

Appointment of Commissioned and Warrant Officers of the Army. (Cited in paras 4–4*a* and 4–10.)

AR 135–133

Ready Reserve Screening, Qualification Records System and Change of Address Reports. (Cited in paras 2–12*i*, 2–17*e* and 2–17*g*.)

AR 135–316

Judge Advocate Training. (Cited in para 4–4*a*.)

AR 140–10

Assignments, Attachments, Details, and Transfers. (Cited in paras 1–7, 2–3*d*, 2–8*c*, 2–27*b*.)

AR 140–120

Medical Examinations. (Cited in paras 2–12*i* and 4–4*a*.)

AR 190–10

Security of Government Officials. (Cited in para 2–8*d*.)

AR 195–2

Criminal Investigation Activities. (Cited in para 2–16*c*.)

AR 310–10

Military Orders. (Cited in paras 1–10*a*, 3–6*a*, and 6–11*c*.)

AR 600–9

The Army Weight Control Program. (Cited in para 2–11*i*.)

AR 600–31

Suspension of Favorable Personnel Actions for Military Personnel in National Security Cases and Other Investigations or Proceedings. (Cited in paras 1–2*b*, 2–9, and 2–18.)

AR 600–43

Conscientious Objection. (Cited in paras 1–2*b* and 4–7.)

AR 600–291

Foreign Government Employment. (Cited in para 4–4*b*.)

AR 601–25

Delay in Reporting for and Exemption from Active Duty and Active Duty Training. (Cited in para 4–4*a*.)

AR 604–5

Clearance of Personnel for Access to Classified Defense Information and Material. (Cited in para 2–18*a*.)

AR 604-10

Military Personnel Security Program. (Cited in paras 1-2*b*, 2-2*b*, 2-3*b*, 2-14, and 6-14*a*.)

AR 623-105

Officer Evaluation Reporting System. (Cited in paras 2-12*m* and 2-20*b*.)

AR 635-5

Personnel Separations—Separation Documents. (Cited in para 1-6.)

AR 635-120

Officer Resignations and Discharge. (Cited in para 1-2*b*.)

NGR 600-100

Commissioned Officers—Federal Recognition and Related Personnel Activities. (Cited in para 4-4*a*.)

NGR 635-101

Efficiency and Physical Fitness Boards (Modifies 6). (Cited in paras 1-13*h*, 2-2*b*, 2-8*b*, and 2-25*a*.)

DA Pam 600-81-1

Military Personnel Office Separation Processing Procedures. (Cited in para 1-12*b*.)

Section II**Related Publications**

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 135-155

Promotion of Commissioned Officers and Warrant Officers Other Than General Officers.

AR 135-180

Qualifying Service for Retired Pay Nonregular Service.

AR 140-1

Mission, Organization, and Training.

AR 635-100

Personnel Separations—Officer Personnel.

AR 635-200

Personnel Separations—Enlisted Personnel.

Section III**Prescribed Forms**

This section contains no entries.

Section IV**Referenced Forms****DA Form 3822-R**

Report of Mental Status Evaluation.

DD Form 256A

Honorable Discharge Certificate.

DD Form 257A

General Discharge Certificate (Under Honorable Conditions).

DD Form 794A

Discharge Certificate (Under Other Than Honorable Conditions).

SF Form 88

Report of Medical Examination.

SF Form 93

Report of Medical History.

PS Form 3800

Receipt of Certified Mail.

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